IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl.Appeal No.618-DB of 1997.
Date of decision:5.4.2007.

Sandhura Singh

.....Appellant

v.

State of Punjab

.....Respondent.

CORAM: HON'BLE MR.JUSTICE UMA NATH SINGH.
HON'BLE MR.JUSTICE A.N. JINDAL.

Present:- Sh. Tarunvir Vashisth,Advocate for the appellant.
Ms.Reeta Kohli, Deputy Advocate General,Punjab.

Uma Nath Singh,J.

This appeal arises out of a judgment dated 3.6.1997, passed by the learned Additional Sessions Judge, Mansa, in Sessions Case NO.170 dated 10.11.1995, holding the accused appellant guilty of offence under Section 302 IPC for committing the murder of deceased Jagdev Singh and under Section 323 IPC for causing simple injuries to witness Sohan Singh (PW6).

The prosecution case is based on the statement of Sohan Singh (Ex.PK) given to SHO Balwant Singh (PW11) of PS Jhunir. PW 11 received a ruqa (Ex.PE) from PS City Mansa that deceased Jagdev Singh son of Sohan Singh, Jat, (PW6) resident of Village Moda, who was admitted in Civil Hospital, Mansa, in an injured condition has died, and Sohan Singh was admitted in the hospital in an injured condition. Thereupon PW11 being accompanied by his staff, C-II Mal Singh, Constable Ramesh Chand, Constable Sukhwinder Singh, PHG Telu Singh, and PHG Harjinder Singh, went to the hospital in an official Canter driven by Constable Lakhwinder Singh. He moved an application Ex. PP/1 to the Medical Officer concerned

for opinion as to fitness of injured Sohan Singh to make a statement. The doctor opined that the patient was fit to make a statement vide his endorsement (Ex. PP). Accordingly, the statement of Sohan Singh (Ex.PK) was recorded by him. The witness stated that he was a resident of Village Moda and was engaged in agriculture work. His two daughters Binder Kaur and Harmel Kaur were married in Village Mian. A day before the incident i.e. 10.7.1995, he had gone to see his daughters with his wife Jit Kaur (not examined). On the day of incident i.e. 11.7.1995, at about 4.30 PM, they returned home and found that his son, deceased Jagdev Singh, appeared to have consumed liquor. He rebuked the deceased but in the meantime at about 5.30 PM his nephew accused Sandhura Singh @ Neela, son of Tek Singh, whose house also adjoined his house , came to his place, and started abusing him. The witness came near the door of his house and forbade him to do so. Then the accused caused a kasia blow to him. He raised his hands to save himself but said kasia blow landed on and hit his right hand wrist from the blunt side. Thereafter, he caused further two kasia blows from the blunt side, which hit the right and the left sides of his head. The complainant raised an alarm, which attracted his son Jagdev Singh who rushed to his rescue. Thereafter, the accused ran away with his kasia towards his house. The complainant accompanied by the deceased son went to the house of the accused for lodging a protest. The deceased was ahead of him and when they entered the door of the house, the accused attacked the deceased with his kasia, and when the deceased tried to turn back, it hit on the back side of his head from its blade side. On hearing the noise, Kirpal Singh son of Chand Singh (not examined) came outside the door of the house of the accused. He also witnessed the entire incident.

When the complainant and his nephew Kirpal Singh raised alarms, the accused ran away with kasia from the spot. They arranged for a jeep and carried the deceased in injured condition to Civil Hospital, Mansa, where he succumbed to his injuries. The complainant was also admitted in the hospital. This statement of the witness on being read out to him was found to be correct. Hence, it was made a ruqa (Ex.PK/1) and sent by PW 11 to the police station, whereupon an FIR (Ex.PK/2) was registered on the date of incident at 11.30 PM. The investigating officer (PW11) thereafter conducted the inquest proceedings, and prepared the report (Ex.PB) of the dead body. He sent the dead body with Constable Mal Singh with an application (Ex.PA/3) for post mortem examination, which was conducted by Dr. Inderpal Singh (PW1), who submitted his report vide Ex.PA. After completion of necessary investigations, he put up a challan under Section 302/323 IPC against the accused before the learned Illaqa Magistrate who committed the case to the Court of Sessions for trial, who held the accused guilty of offence charged with vide the impugned judgment.

Learned counsel for the appellant confined his submissions only to the nature of offence and pleaded that since it is a case of solitary injury on a sudden provocation, the offence would be covered by the provisions of Section 304 Part I IPC and not under Section 302 IPC. On the other hand, learned State counsel supported the judgment.

Irrespective of the limited submissions of the learned counsel for the appellant, we have carefully examined the entire evidence ourselves before coming to the conclusion to follow.

The prosecution has examined as many as 11 witnesses whereas the accused has produced none in his defence.

Dr. Inderpal Singh (PW1) a Medical Specialist in Civil Hospital, Mansa, conducted the post mortem on the dead body of the deceased on 12.7.1995 at 9 AM. According to him, the rigor mortis was present all over the dead body which was moderately built and nourished. He has noted the following injuries:-

"1.An incised wound 8 cm x ½ cm spindle shaped with clear cut margin present on the occipital region. It was horizontal in direction. Clotted blood and brain matter was present. Its site-5" above the posterior hair line in the centre.

On dissection:- There was a corresponding bone deep cut in the skull. Underlying membranes of brain were also cut. A small part of posterior of brain was missing. A large haematoma was present in the posterior cranial fossa. The underlying brain was contused.

Walls ribs pleura, larynx and trachea, right lung, left lung were healthy. Poticardium were healthy. Left side of heart was empty. Right side of heart was full of blood.

Abdomen.

Wall, peritoneum, mouth larynx were healthy. Stomach and its contents healthy and contains chyle. Small intestines were healthy and contained chyle. Large intestine was healthy and contained fecal matter and gases. Liver, spleen, kidneys, were healthy. Bladder was healthy and contained about 10 ml. Of urine. External and internal generation were healthy. Muscle bond joints were healthy."

In his opinion, the aforesaid injury was ante mortem in nature

and the death was caused due to the injury to brain, a vital organ, and haemorrhage. The injury was sufficient to cause death in the ordinary course of nature. After the post mortem examination, he handed over the dead body to the police with the parcels of articles relating to the dead body. In his evidence, he has also stated that he had sought for and received the opinion of the Chemical Examiner being Ex.PC. The Chemical Examiner's report disclosed the presence of blood with alcohol concentration (184 mg. per 100 ml. of blood). The FSL report (Ex. PZ) was also put to him during his evidence in the Court. The report also disclosed presence of human blood in the soil collected from the place of occurrence. The result of blood grouping was inconclusive. The witness clarified that he had seen the weapon of offence, kasia (Ex.P1), and the injury noticed on the person of the deceased could be possible with a blow from the sharp portion of the blade of that weapon. In his cross examination he has also testified that the quantity of liquor disclosed in the Chemical Examiner's report could be intoxicating to an average person. He has stated that the injury on the person of the deceased could also cause unconsciousness.

Dr.P.K.Garg, (PW2) E.M.O., Civil Hospital, Mansa medico legally examined complainant Sohan Singh (PW6), an injured witness, on 11.7.1995 at 8 PM and noticed the following injuries:-

1. “Lacerated wound 4.5 cm. x 0.5 cm. on the left parietal region, 1 cm. lateral to midline. Bleeding was present. Wound was scalp tissue deep. Wound was lying longitudinally. Advised x-ray.
2. Lacerated wound 4.5 cm. x 0.5 cm. on the right parietal

region. Wound was lying obliquely 3 cm. above anterior hair line. Upper end of wound was reaching upto midline, bleeding was present. Advised x-ray.

3. Reddish contused swelling 6 cm. x 3 cm. on the posterial aspect of right wrist joint, tender on touch. Advised x-ray."

According to him, the nature of all the three injuries as per x-ray repot was found to be simple. The probable duration of the injuries was within six hours. The kind of weapon used was blunt. The carbon copy of the MLR (Ex.PD) issued by him was duly proved as Ex.PD. He also proved ruqa (Ex.PE) sent from the hospital to PS Mansa regarding the death of the deceased and admission of the injured witness Sohan Singh (PW6). He has admitted to have seen the weapon of offence kasia (Ex.P1) and according to him the injuries located on the person of the injured were possible from the use of blunt side of the said weapon. In his reply to a defence suggestion in the cross examinations, he has stated that the injured was admitted on 11.7.1995 at 7.30 PM as an indoor patient and was discharged on 16.7.1995.

Constable Ganga Ram (PW3) tendered his evidence on affidavit (Ex.PF). In his cross examinations, he stated that the FIR was handed over to him at 12.30 midnight, which he delivered to the Illaqa Magistrate on 12.7.1995

Constable Supinder Singh (PW4) also tendered his evidence on affidavit (Ex.PG), stating that he delivered a parcel received from the Police Station at FSL Chandigarh on 13.7.1995. However, in his cross examinations, he has also stated to have seen the presence of accused in the Police Station on the date of incident.

Ashok Kumar (PW5) is the Draftsman, who prepared an scaled

site plan (Ex.PJ) with correct marginal notes, on being pointed out by Sukhjit Kaur (PW 8). In his cross examinations, he has indicated the place being point “G” where the accused had caused injury to the deceased. The place is situated inside the house of the accused.

Sohan Singh (PW6) is the father of the deceased. In his statement, he has reiterated the statement (Ex.PK) given to the Investigating Officer (PW11), which was ultimately registered as an FIR (Ex.PK/2). However, he has also stated that on his return with his wife from his daughters' place at 4.30 PM, he had noticed that his deceased son had taken liquor. Hence, they started quarreling with him. Witness Sukhjit Kaur (PW8) wife of the deceased also quarreled with him for taking liquor with accused Sandhura Singh. At that time, Sandhura Singh had come to him. He was told to go back but he started abusing them and left his place. The accused was armed with kasia and he had also given a kasia blow to the complainant which he warded off with the help of his right arm. He repeatedly caused two kasia blows which landed and hit the witness on the left and the right sides of his head. Moreover, he has stated that the kasia blows were given only from its blunt side, and thereafter the accused went back towards his house. He has further stated that after this incident, he alongwith his wife, daughter-in-law, and the deceased son, Jagdev Singh, went to the house of the accused to lodge a protest. He has stated that Kirpal Singh @ Harpal Singh was also accompanying them. Deceased Jagdev Singh was ahead of them when they entered the house of the accused. He further stated that accused was standing in front of his house with kasia. The deceased on seeing the accused turned back but the accused caused a kasia blow on the back side of his head. As a result, the deceased collapsed.

The complainant side raised alarms and the accused ran away with the weapon. In his cross examinations he has admitted that the deceased had taken liquor in the company of the accused. In his cross examinations he has stated that the accused had caused injury to the deceased while he was inside his house. As a result of the injury the entire brain matter had come out and the deceased had collapsed.

Head Constable Jagraj Singh (PW7) tendered his evidence on affidavit (Ex.PL). He had received the case property handed over to him by the Investigating Officer (PW11).

Sukhjit Kaur (PW8) supported the injured witness (PW6) in material particulars, and has reiterated his statement that the deceased had taken liquor with the accused, therefore, his father-in-law (PW6) had abused him as to why he had taken liquor with the accused, who, according to them, was not a good person. In her cross examinations, she has admitted that the incident had taken place only inside the house of the accused.

Constable Sukhwinder Singh (PW9) also tendered his evidence on affidavit (Ex.PN), so is the case with Constable Mal Singh (PW10), whose evidence on affidavit is (Ex.PO).

Sub Inspector Balwant Singh (PW11) was posted as SHO, PS Jhunir, on the date of incident. He has proved the FIR so also the investigation conducted by him. He conducted the inquest, sent the dead body for post mortem, and arrested the accused. He also recorded the statements of the prosecution witnesses.

The accused in his statement before the Court under Section 313 Cr.P.C., has stated that deceased Jagdev Singh was of his age group. His parents harboured a misplaced suspicion that the accused had induced

the deceased to take liquor and had been putting him into bad habits, which, according to him, was totally false. On the date of occurrence, he was hoeing his narma crop at 1 PM in his field. Sohan Singh (PW6) came there duly armed with a dang. He started abusing him filthily and on being objected to by the accused he wielded lathi towards him,which was warded off with the help of kasia. The accused has admitted to have given two blows on the head of PW6 which landed on his right arm. Thereafter, he continued with his work for sometime and then came to his house. At that time, deceased Jagdev Singh, being armed with a gandasa, came to his house and wielded it towards him. He retreated and saved himself. When the deceased was about to strike second time inside the residential house of the accused, the latter in order to save himself wielded his kasia on the head of the deceased and as a result, the deceased fell down on the floor. He informed this incident to Kirpal Singh who directed him to go to police station. He went to the police station the same day and narrated the incident to the police but no action was taken, and instead, he was implicated in this case. The blood was also noticed present inside his house.

On a careful analysis of the aforesaid evidence, we notice that there were two incidents, one outside the house of the accused which is said to be at the door of the complainant, according to their version, and in the field of the accused according to his version. The complainant (PW6) has stated that on receiving injuries, the wounds started bleeding and the blood fell on the ground of his house, but the prosecution evidence does not suggest any collection of blood stained soil from that place. The accused has admitted to have caused three blows from the blunt side of kasia to the injured in the exercise of his right of self defence. Thus, he has admitted

causing of injuries to the witness (PW6) irrespective of the controversy about the exact time of the first incident. Dr.P.K.Garg (PW2) in his testimony has stated the duration of injuries to be within six hours from the time of examinations. Thus, there is no dispute about the first incident. As regards the intention in causing the injury to the deceased and its nature, as per the prosecution evidence, the solitary injury caused to the deceased was only in continuation of the earlier incident when the complainant side had gone inside the house of the accused to lodge a protest. Admittedly, as per the narration by the eye witness and the medical evidence, only a single injury was caused to the deceased on the back side of his head, being the occipital region. Moreover, it has not come in the prosecution evidence that as a result of the said injury, the deceased had died soon after his admission in the hospital or during his treatment. The accused had caused the injury only when the deceased had turned back on seeing him. The trial court has placed reliance on the evidence of the eye witness (PW6) whereas in his statement to the Investigating Officer (Ex.PK) the witness has stated: " I and my son Jagdev Singh both went to the house of Sandhura Singh for protesting. My son was ahead of me. When we entered the door of the house of Sandhura Singh, then Sandhura Singh attacked with his kasia on my son Jagdev Singh. When Jagdev Singh tried to turn back, which (it) hit him on the back side of the head of my son Jagdev Singh from its sharp side."

This is his earliest statement in point of time to police given after a certificate was issued by the Doctor that the witness was fit to make a statement. Thus, this statement suggests that the deceased was ahead of all when the complainant side had entered the house of the accused, and when

he was attacked, he had turned his head. As a result, the injury had landed on the backside/occipital region of his head. This is not the case that when the deceased had turned back having seen the accused he was attacked by him with kasia and given a fatal blow on the backside of his head as the complainant has depicted in his evidence. Thus, the complainant appears to have improved in his court statement so as to deny the right of self defence to the accused. Further, the draftsman (PW8) has indicated that the place where the injury was caused was situated inside the house of the accused, being point "G" in the site plan. Even the eye witnesses PW6 and PW8 have also admitted that the incident of causing fatal injury to the deceased had taken place only inside the house of the accused. In a background, where, admittedly, there was an earlier incident of attack by the accused as he had caused three blows to the complainant, though from the backside of kasia, he could have a reasonable apprehension on seeing the complainant side entering his house that he could be attacked and assaulted by them. His version of the incident that he was attacked by the deceased, who was carrying a gandasa, has not been believed in by the trial court, but the Court has placed a partial reliance o n his explanation under Section 313 Cr.P.C., to hold him guilty. The fact that the incident took place inside the house of the accused in a background of earlier assault caused by him indicated that the complainant side was aggressor, and thus, the version given by the accused cannot be simply brushed aside for the reason that the deceased had suffered only one injury on the back side of his head and there was no repetition. Moreover, injured witness (PW6) has stated in his testimony that the deceased was ahead of all and as per his earliest version given to the police, when the deceased was attacked he turned his head. As a result, he

suffered the injury on the backside of his head. Under the circumstances, it cannot be said that the accused had intentionally caused the injury on the backside of the deceased even after he had turned back on seeing the accused on the spot with a weapon. Besides, as per the evidence of the Investigating Officer (PW11), he had collected blood stained soil only from the house of the accused not from any other place. Further, if the accused had any grudge, it was only against the complainant (PW6) and not against the deceased. Even then, he had caused only three simple injuries to the witness from the blunt side of the weapon. Thus, unless there was an apprehension of some imminent danger to his life inside his house, the accused could not have caused the injury to the deceased from the sharp portion of the blade of the weapon. Under the circumstances, he is entitled to get the right of self defence. But we cannot ignore the evidence that the impact of the solitary injury caused by the accused was so big that the deceased succumbed to that injury in the hospital. Hence, the accused had exceeded in the exercise of his right of self defence. In these premises, the impugned judgment of conviction and sentence under Section 302 IPC may not endure, and, thus, it is set aside, and instead, the accused is held guilty of offence under Section 304 Part I IPC, and is sentenced to RI for 12 years. Thus, the appeal succeeds in part. As regards the conviction and sentence of accused under Section 323 IPC, for the discussion as above the same are hereby affirmed.

(Uma Nath Singh)
Judge

5.4.2007.
joshi

(A.N.Jindal)
Judge